

Remarks

Claims 1-35 are pending in this application. Claim 1 has been amended, new claim 36 has been added, and no claims have been canceled. Reconsideration of this application is respectfully requested in light of the above amendments and the following remarks.

Rejection of Claims 1-19 Under 35 U.S.C. § 112

Claims 1-19 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite due to insufficient antecedent basis for the limitation “the at least one interior member” in line 12 of claim 1. In response, Applicant has amended claim 1 to recite “at least one interior member” at line 8 to provide the proper antecedent basis, where this amendment is merely to address the rejection under 35 U.S.C. § 112 and adds no new element. Accordingly, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 1, and corresponding dependent claims 2-19, under 35 U.S.C. § 112.

Rejection of Claims 1-35 Under 35 U.S.C. § 103(a) over Apps ‘279 in view of Hammett, McGrath, and Sausey

Claims 1-35 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,660,279 issued to Apps et al. (“Apps ‘279”) in view of U.S. Patent No. 6,079,554 issued to Hammett (“Hammett”), U.S. Patent No. 6,047,844 issued to McGrath (“McGrath”), and U.S. Patent No. 2,929,530 issued to Sausey (“Sausey”). Applicant respectfully traverses this rejection for the reasons stated below.

The Examiner admits that Apps ‘279 discloses interior columns that are the same height as the wall pylons, but asserts that Hammett, McGrath, and Sausey disclose interior columns of shorter height than the wall structure. Applicant respectfully disagrees with the Examiner’s characterization of these references. With reference first to McGrath, Applicant asserts that McGrath discloses bottle support surfaces 46 which are the same height as the wall structure. McGrath states that “[e]ach support surface 46 extends upward above the base 50 to a top edge 51 of the support surface” (*see* McGrath, col. 8, lines 57-59). As is clearly

shown in FIG. 25, top edge 51 is the same height as wall structure 22. Accordingly, McGrath and Apps '279 cannot be properly combined to achieve Applicant's claimed invention.

Turning now to Hammett, Applicant submits that Hammett's spacer members 21 (FIG. 1) are not of sufficient height to provide lateral support to bottles loaded in the tray, but rather function only to "provide greater stability to a stack of empty trays" (*see* Hammett, col. 5, lines 59-61). Furthermore, Hammett does not recognize problems solved by Applicant's invention, namely a reduction in the height of the interior columns below that of the wall structure to reduce tray weight, reduce mold time, and facilitate faster and more even cooling while still maintaining sufficient height to provide lateral support for loaded bottles. As such, Apps '279 and Hammett cannot be properly combined to achieve Applicant's claimed invention.

Lastly, with reference to Sauey, a shotgun shell box is disclosed which includes a cover 12 and holds cylindrical shotgun shells below the top edge of side walls 22, 24 (*see* Sauey, col. 1, lines 47-49; col. 2, lines 16-20; FIG. 1). Sauey does not disclose or suggest a low depth tray having side walls lower than the height of its stored product as in Applicant's invention, but rather discloses a box which completely contains its stored product and which, due to its cover, prohibits the storage of a product which extends beyond the height of the side walls. As such, Sauey teaches away from Applicant's claimed invention, and Sauey and Apps '279 cannot be properly combined to produce Applicant's invention. Again, Sauey fails to appreciate the solution achieved by Applicant's invention, wherein the interior column height is reduced compared with the wall structure while still maintaining the stability of stored bottles having a height greater than the wall structure.

Therefore, Applicant believes that claims 1, 20, and 34-35 are patentably distinguishable over the combination of Apps '279 with any of the Hammett, McGrath, and Sauey references. Accordingly, reconsideration and withdrawal of the rejection of these claims, and their corresponding dependent claims, under 35 U.S.C. § 103(a) is respectfully requested.

**Rejection of Claims 1-10 and 12-34 Under 35 U.S.C. § 103(a)
over Apps '793 or Apps '002 in view of Hammett, McGrath, and Sauey**

Claims 1-10 and 12-34 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,073,793 issued to Apps et al. ("Apps '793") or U.S. Patent No. 4,978,002 issued to Apps et al. ("Apps '002") in view of Hammett, McGrath, and Sauey. Again, the Examiner admits that neither Apps '793 nor Apps '002 disclose interior columns that are of lesser height than the wall pylons, but asserts that Hammett, McGrath, and Sauey disclose such a feature. For the reasons explained above for each of the Hammett, McGrath, and Sauey references, Applicant asserts that the combination of these references with either Apps '793 or Apps '002 fails to achieve Applicant's claimed invention as recited in claims 1, 20, and 34. Accordingly, Applicant believes that independent claims 1, 20, and 34, and corresponding dependent claims 2-10, 12-19, and 21-33, are patentably distinguishable over Apps '793 or Apps '002 in view of Hammett, McGrath, and Sauey, and therefore respectfully requests reconsideration and withdrawal of this rejection.

New claim

Claim 36 has been added to further define the subject matter of the invention, including that "the interior columns have a height greater than the height of the divider walls but less than the height of the pylons and less than the height of bottles loaded in the tray." This combination is neither disclosed nor suggested by the cited references, and thus Applicant believes that this claim is also patentably distinguishable over these references.

Conclusion

In summary, Applicant believes that the claims, as amended, now meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. If a telephone conference would expedite allowance of the case or resolve any further questions, such a call is invited at the Examiner's convenience.

Please charge **\$1004.00** (to cover the Petition fee of \$920.00 and the additional claim filing fee of \$84.00), as well as charge any additional fees or credit any overpayments as a result of the filing of this paper, to our Deposit Account No. 02-3978 -- a duplicate of this paper is enclosed for that purpose.

Respectfully submitted,

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Attachment

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

Claim 1 has been amended as follows:

1. (Amended) A low depth tray for bottles, comprising:
 - a first pair of opposed walls;
 - a second pair of opposed walls attached to the first pair of opposed walls to form a wall structure;
 - a base attached to the wall structure;
 - a plurality of interior divider walls extending upwardly from the base; and
 - at least one interior member projecting upwardly from an interior of the wall structure and connected to the divider walls, the at least one interior member having a height less than the height of the wall structure and less than the height of bottles loaded in the tray[;],
wherein the at least one interior member, the base, the divider walls, and the wall structure define a plurality of bottle retaining pockets which are each sized to receive a single bottle therein.

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